

State of California
AIR RESOURCES BOARD

**Addendum to the Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED AB 118 AIR QUALITY GUIDELINES FOR THE AIR QUALITY IMPROVEMENT PROGRAM AND THE ALTERNATIVE AND RENEWABLE FUEL AND VEHICLE TECHNOLOGY PROGRAM

Public Hearing Date: September 25, 2008
Agenda Item No.: 08-8-7
Addendum Prepared: May 12, 2009

I. Background

On February 23, 2009, the Air Resources Board (ARB or Board) submitted the Final Statement of Reasons (FSOR) and the Final Regulation Order for the AB 118 Air Quality Guidelines for the Air Quality Improvement Program and the Alternative and Renewable Fuel and Vehicle Technology Program (AB 118 Air Quality Guidelines) to the Office of Administrative Law (OAL) for review and approval. ARB withdrew the proposed regulatory action based on the following concerns raised by OAL:

- The Board approved regulations included a two part process for determining which tool to use for the full fuel cycle analysis described in section 2343 of the regulations. The first step was to conduct the analysis using tools that are being developed through the Low Carbon Fuel Standard (LCFS) regulatory process. In the event that the LCFS had not been adopted and become legally effective when selecting projects for funding, the August 2007 Full Fuel Cycle Assessment: Well-to-Wheels Energy Inputs, Emissions, and Water Impacts, CEC-600-2007-004-REV (2007 Full Fuel Cycle Assessment) would be used in the interim. OAL raised concerns about the clarity of this process and the uncertainty of specifying a regulation that is not yet effective.
- The Board approved regulations included a provision to ensure that the Air Quality Improvement Program and the Alternative and Renewable Fuel and Vehicle Technology Program were implemented in a manner which ensures the funding agency consider localized health impacts for projects that trigger permitting, licensing, or environmental review requirements. OAL raised concerns about the clarity of this provision.

This Addendum to the FSOR for the AB 118 Air Quality Guidelines describes and provides reasoning for the changes that the ARB made to the Final Regulation Order.

II. Additional Modifications

ARB identified and made additional conforming modifications, based on concerns raised by the OAL, which were appropriate to further clarify the amended regulations. Subsequently, ARB issued a Second Notice of Public Availability of Modified Text and Availability of Additional Documents (Second Notice) on April 15, 2009 to further modify the regulatory text and to solicit public comment on these latest proposed modifications.

The Second Notice included modifications to the approved regulatory text to remove all references to the LCFS. In place of the LCFS, the requirements of the full fuel cycle analysis are to be conducted using Appendix A of the 2007 Full Fuel Cycle Assessment and appropriate baseline fuel pathways have been specified. Descriptions of the modifications are provided below.

Section 2342. Definitions

Staff added a definition for *Fuel Pathway* and deleted the definition for the *Low Carbon Fuel Standard*.

Section 2343. Requirements

(b) Full Fuel Cycle Analysis

Staff incorporated by reference Appendix A of the August 2007 Full Fuel Cycle Assessment: Well-to-Wheels Energy Inputs, Emissions, and Water Impacts, CEC-600-2007-004-REV, as the tool for conducting the full fuel cycle analysis. All references to the LCFS have been deleted. Staff has also included a description for determining the appropriate baseline fuel pathways and has included a corresponding table for clarity.

(c) Permitting, licensing, and environmental review

Staff has clarified that the requirements for localized health impacts must be consistent with State law and that the funding agency must complete the process described in the initial text.

(f) Special provision for the LCFS

Staff has deleted this reference to the LCFS.

III. Document Incorporated by Reference

Staff incorporated by reference in the regulation Appendix A of the August 2007 Full Fuel Cycle Assessment: Well-to-Wheels Energy Inputs, Emissions, and

Water Impacts, CEC-600-2007-004-REV. The August 2007 Full Fuel Cycle Assessment document was included as a reference in the rulemaking file and was available to the public, but was not specifically incorporated by reference in the proposed regulation. This document is available on ARB's internet web site for this rulemaking. Because the newly incorporated document will be used by a limited number of people, specifically the ARB and the California Energy Commission, as well as its length and complexity, it would be cumbersome and impractical to publish the contents in their entirety in the California Code of Regulations.

IV. SUMMARY OF COMMENTS AND AGENCY RESPONSE TO THE SECOND 15-DAY COMMENT PERIOD

Written comments in response to the Second Notice were received from one individual, Mr. Charles Alexander.

Comment: Removal of language referencing "indirect land use" certainly seems indicative of a potential policy shift favorable to such things as corn ethanol. Mr. Alexander requested that language requiring accounting for indirect land use effects be included in the language of the Proposed Regulation Order.

Agency Response: No change was made in response to this comment. This language was removed from the regulatory text because it was tied to methodology for determining the effect of indirect land use developed through the LCFS regulatory process. Due to OAL concerns pertaining to clarity of the proposed regulation, all references to the LCFS, including the methodology for determining full fuel cycle and indirect land use emissions, have been removed from the regulation. In the absence of the LCFS, this regulation requires that Appendix A of the Board approved 2007 Full Fuel Cycle Assessment be used for determining full fuel cycle emissions. This is consistent with the "Special Provision for LCFS" in the proposed regulatory language approved by the Board at the September 25, 2008 hearing. Although Appendix A of the 2007 Full Fuel Cycle Assessment does not include indirect land use effects, this modification is not indicative of an ARB policy shift. ARB is committed to conducting a second rulemaking to amend the AB 118 Air Quality Guidelines once the LCFS, which was approved by the Board on April 23, 2009, becomes legally effective to incorporate the appropriate tools and methodology for determining indirect land use effects. In the meantime, there is no Board approved methodology to account for indirect land use effects.